

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
Branch Banking & Trust Corporation ) MUR 5171  
 )

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its responsibilities under 2 U.S.C. § 438(b). The Commission found reason to believe Branch Banking & Trust Corporation ("Respondent") violated 2 U.S.C. § 441b.

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).
- II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondent enters voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:
  - 1. Dole/Kemp '96, Inc. is a political committee within the meaning of 2 U.S.C. § 431(4).
  - 2. Franklin National Bank ("Franklin"), which was acquired by Respondent in 1999, was a national bank within the meaning of 2 U.S.C. § 441b.
  - 3. National banks are prohibited from making contributions "in connection with any election to any political office." 2 U.S.C. § 441b(a). It is unlawful "for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by [2 U.S.C. § 441b(a)]." 2 U.S.C. § 441b(b)(a).
  - 4. A "contribution" is defined as, *inter alia*, a loan, "except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business." 2 U.S.C. § 441b(b)(2).

23 04 406 3658

5. An overdraft made on a checking or savings account shall be considered a contribution by the bank unless: The overdraft is subject to automatic overdraft protection; the overdraft is made on an account which is subject to a definite interest rate which is usual and customary; and there is a definite repayment schedule. 11 C.F.R. § 100.7(b)(11). (An overdraft that does not meet these conditions is a prohibited contribution.) See 11 C.F.R. § 114.2(a).

6. The Commission found reason to believe that eight General Committee bank accounts held at Franklin were overdrawn at various times in the period between October 25, 1996 and November 14, 1996 and that the overdrafts ranged from a low of \$192,752.45 on November 14, 1996 to as high as \$1,068,484.33 on November 4, 1996. The Commission found reason to believe that those overdrafts resulted in prohibited contributions to the general Committee.

7. Respondent contends that Franklin made a good faith effort to comply with the Commission's regulations in connection with the General Committee accounts, and that Franklin at all times treated the General Committee in the same manner as other commercial customers in similar circumstances. Further, Respondent contends that on most days between October 25, 1996 and November 14, 1996, if a General Committee account did not contain sufficient funds to cover a draft presented for payment on the previous banking day, Franklin followed its usual and ordinary practice by contacting the General Committee to request that funds be deposited or transferred to that account. Respondent contends that except in four instances discussed below, Franklin received funds sufficient to cover such drafts on the day that they were honored. In these instances, Respondent contends that no overdrafts occurred, and accordingly, Franklin did not advance funds or extend credit.

8. Respondent contends that in the four instances in which sufficient funds were not transferred or deposited on the same day that the drafts were honored, Franklin substantially complied with the Commission's regulations by ensuring that the bank was adequately secured during the brief periods (none lasting more than two days) before the General Committee deposited or transferred funds to correct deficiencies. At the time in question, Franklin did not offer automatic overdraft protection to any of its commercial customers and contends that it dealt with the General Committee in the same manner that it dealt with its similarly situated customers.

V. Respondent and the Commission have agreed to conciliate this matter pursuant to 2 U.S.C. § 437g(a)(5)(A).

1. Respondent does not contest that Franklin violated 2 U.S.C. § 441b, but does not concede that the record established a violation.

VI. Pursuant to 2 U.S.C. § 437g(a)(5)(A), Respondent will pay a civil penalty to the Federal Election Commission in the amount of Twenty-Two Thousand Dollars (\$22,000).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof

has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lois G. Lerner  
Acting General Counsel

BY:   
Gregory R. Baker  
Acting Associate General Counsel.

9/27/01  
Date

FOR RESPONDENT:

  
(Name)  
(Position) VICE PRESIDENT

8/27/01  
Date

23 " 04 " 406 " 3660